

AMENDED IN ASSEMBLY APRIL 30, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 617

Introduced by Assembly Member Torrico

February 21, 2007

An act to ~~amend Section 12112~~ *repeal and add Section 12112* of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 617, as amended, Torrico. State contracts: information technology goods and ~~services: progress payments: services.~~

Existing law authorizes the Department of General Services to provide for progress payments in any contract for information technology goods or services that are to be manufactured or performed by the contractor, exclusively for the state, at the contractor's shop or plant, provided that not less than 10% of the contract price be withheld until final delivery and acceptance of the goods or services, and that the contractor submit a faithful performance bond, in a specified sum.

~~This bill would define "progress payments" for purposes of those contracts, as payments contractually required to be made to the contractor, for the purpose of financing that contractor's cost of delivering a good or service, prior to the actual delivery of that good or service, as provided.~~

This bill would repeal this provision authorizing the department to provide for progress payments in any contract for information technology goods or services that are to be manufactured or performed by the contractor, exclusively for the state. This bill would instead require the department to develop and maintain guidelines to establish a framework for the evaluation of risk to the state that results from the

acquisition of information technology goods or services, and would require this risk analysis to determine the need for financial protection that is in the best interest of the state, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12112 of the Public Contract Code is*
2 *repealed.*

3 ~~12112. Any contract for information technology goods or~~
4 ~~services, to be manufactured or performed by the contractor~~
5 ~~especially for the state and not suitable for sale to others in the~~
6 ~~ordinary course of the contractor's business may provide, on the~~
7 ~~terms and conditions that the department deems necessary to~~
8 ~~protect the state's interests, for progress payments for work~~
9 ~~performed and costs incurred at the contractor's shop or plant,~~
10 ~~provided that not less than 10 percent of the contract price is~~
11 ~~required to be withheld until final delivery and acceptance of the~~
12 ~~goods or services, and provided further, that the contractor is~~
13 ~~required to submit a faithful performance bond, acceptable to the~~
14 ~~department, in a sum not less than one-half of the total amount~~
15 ~~payable under the contract securing the faithful performance of~~
16 ~~the contract by the contractor.~~

17 *SEC. 2. Section 12112 is added to the Public Contract Code,*
18 *to read:*

19 *12112. (a) It is the intent of the Legislature that the*
20 *Department of General Services provide financial protection*
21 *measures that, at a minimum, allow for recovery of costs associated*
22 *with an information technology acquisition in the event that the*
23 *project cannot be completed by the contractor.*

24 *(b) The department shall develop and maintain guidelines to*
25 *establish a framework for the evaluation of risk to the state that*
26 *results from the acquisition of information technology. This risk*
27 *analysis shall determine the need for financial protection that is*
28 *in the best interest of the state, including, but not limited to, any*
29 *of the following:*

30 *(1) An acceptable performance bond as described in Chapter*
31 *2 (commencing with Section 995.010) of Title 14 of Part 2 of the*
32 *Code of Civil Procedure.*

1 (2) Any surety as defined in Section 2787 of the Civil Code.

2 (3) A letter of credit as described in Division 5 (commencing
3 with Section 5101) of the Commercial Code.

4 (4) Protection in the form of contract terms.

5 (5) Any other form of security or guaranty of performance in
6 an amount sufficient to protect the state in the case of default by
7 the contractor providing information technology, or any other
8 breach or malfunction of the goods or services, or both.

9 (c) For purposes of this section, “information technology”
10 means information technology goods or services, or both, as
11 appropriate.

12 ~~SECTION 1. Section 12112 of the Public Contract Code is~~
13 ~~amended to read:~~

14 ~~12112. (a) Any contract for information technology goods or~~
15 ~~services, to be manufactured or performed by the contractor~~
16 ~~especially for the state and not suitable for sale to others in the~~
17 ~~ordinary course of the contractor’s business may provide, on the~~
18 ~~terms and conditions that the department deems necessary to~~
19 ~~protect the state’s interests, for progress payments for work~~
20 ~~performed and costs incurred at the contractor’s shop or plant,~~
21 ~~provided that not less than 10 percent of the contract price is~~
22 ~~required to be withheld until final delivery and acceptance of the~~
23 ~~goods or services, and provided further, that the contractor is~~
24 ~~required to submit a faithful performance bond, acceptable to the~~
25 ~~department, in a sum not less than one-half of the total amount~~
26 ~~payable under the contract securing the faithful performance of~~
27 ~~the contract by the contractor.~~

28 ~~(b) For purposes of this section, “progress payments” means:~~

29 ~~(1) Payments contractually required to be made to the contractor,~~
30 ~~for the purpose of financing the contractor’s cost of delivering a~~
31 ~~good or service to the state, prior to contractor’s actual delivery~~
32 ~~of that good or service to the state under the contract if the~~
33 ~~obligation to make the payments is not based on the acceptance~~
34 ~~by the state of certain deliverables, goods, or services, or a portion~~
35 ~~or component thereof.~~

36 ~~(2) A progress payment does not include a milestone payment,~~
37 ~~which is a payment conditioned on the acceptance of a contracted~~
38 ~~deliverable, good, or service, or a portion or component thereof,~~

- 1 ~~or a payment, after delivery, of a good or service, if that good or~~
- 2 ~~service is individually or separately priced in the contract.~~

O